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SIGNING STATEMENT FOR H.R. 2112

I am signing H.R. 2112, the Intelligence Authorization Act for Fiscal Year 1988, because it authorizes appropriations for critically important intelligence and intelligence-related activities in the coming year. Unfortunately, the bill contains a clearly unconstitutional provision. I nevertheless am signing H.R. 2112 because I believe that the unconstitutional provision is severable from the remainder of the Act.

Section 501 of the bill provides that the Attorney General shall report annually to the congressional intelligence committees "the circumstances of any admission to the United States over the objections of the Federal Bureau of Investigation, of any Soviet national employed by or assigned to a foreign mission or international organization in the United States." The President, of course, has the exclusive constitutional authority to "receive Ambassadors and other public Ministers." U.S. Const. art. II, sec. 3, cl. 3. Moreover, it is clear that even with respect to those Soviet nationals who are to be employed by international organizations, the Attorney General may not constitutionally be compelled to provide Congress with all of the information apparently required by Section 501.

Section 501 would require the Attorney General to divulge to Congress much information that can only be characterized as a "state secret." The Supreme Court has long recognized that such "state secrets" may be protected from disclosure by the Executive branch. See, e.g., United States v. Nixon, 418 U.S. 683, 706, 710 (1974); United States v. Curtiss-Wright Export Corp., 299 U.S. 304, 319-321 (1936). Moreover, much of the information regarding the admission of Soviet nationals over the objection of the FBI will relate to "communications between high Government officials and those who advise and assist them." United States v. Nixon, 418 U.S. U.S. at 705. Such communications are protected from disclosure, of course, because of the need for candor and objectivity by government officials making policy decisions. Id. at 705-706. Requiring the Attorney General to include this information in an annual report to Congress, therefore, violates the constitutional principle of separation of powers.

Although Section 501 is unconstitutional, I believe it to be severable from the remainder of the Act. An unconstitutional provision is severable unless it is evident that the Legislature would not have enacted those provisions which are within its power, independently of that which is not." Buckley v. Valeo, 424 U.S. 1, 108 (1976)(per curiam), quoting Champlin Refining Co. v. Corporation Comm'n of Oklahoma, 286 U.S. 210-234 (1932). Here, Section 501 bears little relation to the remainder of the Act, so it "may be dropped . . . [and] what is left [will be] fully operative as law." Id. Because of the severability of

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Section 501, I am signing this important bill, but I will instruct the Attorney General not to submit an annual report to Congress pursuant to Section 501.

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